

LIHTC Program Update - 2011



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LIHTC Income Limits - 2011



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What is Hold Harmless?

- ☐ In recent years, HUD elected to hold their income limits harmless
- ☐ HUD held their income limits steady, preventing them from declining even if their formulas resulted in income limits that were less than those in effect the previous year

Hold Harmless cont'd

- ☐ HUD's election to hold their income limits steady was of particular importance to the LIHTC program
- ☐ Because rents for each LIHTC project are based on its income limit, if HUD had allowed their income limits to decline, owners of LIHTC projects would have been forced to lower their rents

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End of Hold Harmless

- ☐ HUD elected to stop holding their income limits harmless in 2010
- ☐ Beginning with the income limits HUD issued on May 14, 2010, HUD allows the income limits it calculates for its programs to fluctuate with the local economy

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How Much Will Limits Change

- ☐ HUD recognizes the significance of their change in policy so they will not allow a county's or metro area's income limits to:
 - ☐ Decrease by more than 5 percent in one year;
 - ☐ Or increase in one year by more than the greater of 5 percent or twice the national change in median family income

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Programs Affected

- ☐ HUD publishes their income limits for their programs which include all components of the Section 8 program, public housing, Section 236, 202/811 PRAC, HOME, CDBG, etc.
- ☐ The income limits used by programs administered by Rural Development (RD) are based on HUD's limits

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Programs Affected cont'd

- ☐ The income limits for the low income housing tax credit (LIHTC) and private activity tax-exempt bond programs are also based the limits for HUD's programs
- ☐ However, there are provisions in place that protect LIHTC and bond financed projects from being forced to implement rent decreases when HUD's limits go down

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HERA 2008

- ☐ HERA made changes to how income limits are calculated for LIHTC projects
- ☐ HERA protected owners from rent decreases in 2009 and established a new system for owners to hold their income limits and rents harmless in the LIHTC program beginning in 2010
- ☐ HUD refers to an LIHTC project as a multi-family tax subsidy project (MTSP)

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MTSP Income Limits

- HUD issues 2 sets of income limits for MTSPs:
 - Income limits for Impacted MTSPs
 - Income limits for non-Impacted MTSPs

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Impacted MTSPs

- An Impacted MTSP is any project with income limits that were determined in 2007 or 2008 under HUD's hold-harmless policy
- The project's income limits would have decreased in 2007 or 2008 if HUD had not held them at the previous year's level
- A project must have been in service before 2009 to be an Impacted MTSP

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Impacted MTSPs cont'd

- A single building property must have been in service prior to the end of 2008
- A multi-building property may qualify as an Impacted MTSP if at least one of its buildings was in service prior to 2009
 - Remember that a multi-building property is defined on line 8b of the project's 8609 forms

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Acquisition/Rehab Properties

- ☐ Acquisition credits are placed in service on the date of acquisition
- ☐ A building's rehab credits are PIS as the owner completes its rehab activities
- ☐ An ac/rehab project may qualify as an Impacted MTSP if its acquisition credits were placed in service before 2009

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MTSP Income Limits

- ☐ If the income limit chart lists only a Very Low Income Limit and 60% Income Limit for a county or metropolitan area, all LIHTC in the area use these income limits
- ☐ If the chart includes a second set of income limits, each owner must determine if their project was placed in service before 2009

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MTSP Income Limits cont'd

- ☐ The owner of a non-Impacted project uses the Very Low Income and 60% limits
- ☐ The owner of an Impacted project uses the HERA Special 50% and HERA Special 60% income limits

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MTSP Income Limits cont'd

- May be counties for which HUD published HERA Special limits in 2009 but not 2010 and vice versa
- HUD does not publish HERA Special limits if they are less than the non-Impacted limits
- An Impacted project remains eligible to use any HERA Special limits HUD publishes for the area in future years

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Existing Projects - 2010

- An existing non-Impacted project is one that is placed in service after 12/31/08 and before the date HUD issues the new income limits for the current year
- HUD issued the income limits for 2010 on May 14, 2010
- An existing project in 2010 had to be placed in service on or before May 13, 2010

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Existing Projects - 2011

- HUD issued the income limits for 2011 on May 31, 2011
- An existing project in 2011 had to be placed in service on or before May 30, 2011

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Existing Non-Impacted Projects cont'd

- ☐ Once a project is placed in service, the owner may hold its income limits harmless
- ☐ The owner of an existing project may use the greater of the current year's or previous year's income limits

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New Non-Impacted Projects

- ☐ A new non-Impacted project is one placed in service on or after the date HUD issues the new income limits for the current year
- ☐ In 2011, a new project is one placed in service on or after May 31, 2011
- ☐ A new project in 2011 has to use the 2011 income limits even if they are less than those issued for 2010

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Impact of Lowered Income Limits

- ☐ So long as the income limits do not go down, all non-Impacted projects in an area use the same income limits
- ☐ Once an area's income limits go down one year, an owner must know their PIS date relative to the date HUD issued the income limits each year beginning in 2010 to determine which year's income limits apply to their project

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Key Dates to Remember

- ☐ To use the HERA-Special income limits, a project had to have been **PIS by 12/31/08**
- ☐ HUD issued the 2010 income limits **on May 14, 2010** so a project PIS by May 13, 2010 may continue to use their 2009 income limits if they are higher than their 2010 and 2011 limits

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Key Dates to Remember cont'd

- ☐ HUD issued the 2011 income limits **on May 31, 2011** so a project PIS by May 30, 2011 may continue to use their 2010 income limits if they are higher than their 2011 limits

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Resyndication

- ☐ When a developer resyndicates an existing project, it becomes a non-Impacted MTSP
- ☐ The owner must implement a rent decrease if they have been charging more than the rents calculated using the non-Impacted limits in effect the year the new credit allocation is placed in service

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The LIHTC Rent Floor

- In Revenue Procedure 94-57, the IRS established the concept of a rent floor for every LIHTC project that received its credit allocation after 1989
- Rev Proc 94-57 protected owners from rent decreases below a certain level even if income limits for the area continued to decline

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Revenue Procedures 94-57

- The IRS treats the gross rent floor as taking effect on:
 - The date the HFA initially allocated a credit dollar amount to a building (at carryover); or,
 - For bond-financed projects, the date the HFA initially issued the letter of determination (the reservation letter)

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Revenue Procedure 94-57 cont'd

- An owner may notify the HFA prior to placing a building in service of their intent to calculate the rent floor using the income limits in effect at the placed in service date

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Rent Floor cont'd

- ☐ The new method for calculating income limits seems to nullify Rev Proc 94-57
- ☐ A new rent floor is established for a project every time HUD issues new, higher MTSP income limits for a county or metro area

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Rent Floor cont'd

- ☐ There is a small set of non-Impacted projects for which Rev Proc 94-57 remains relevant:
 - ☐ When an owner establishes a project's rent floor at either the issuance of the carryover allocation or the reservation letter, and
 - ☐ The income limits at placed in service are lower than those used to calculate its rent floor

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Rent Floor cont'd

- ☐ The initial maximum rents for the project will be its rent floor
- ☐ However, the owner will use the income effective at placed in service to determine household eligibility for an LIHTC unit
- ☐ This situation will continue until the limits for the current year are at least equal to those used to calculate the project's rent floor

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Example

- ☐ The owner receives the carryover allocation in 2009 and establishes the rent floor
- ☐ The owner places the project in service in 2011 but the 2009 income limits are greater than 2011 limits
- ☐ The rents will be calculated using the 2009 limits but the owner will use the 2011 limits to determine household eligibility

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Additional HERA Provisions



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Fixing the 9% Credits

- ☐ For a new building placed in service before December 31, 2013 which is not federally subsidized, the applicable credit percentage will not be less than 9 percent
- ☐ The only program now considered a federal subsidy is the private-activity tax exempt bond program

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Not Federal Subsidies

- ☐ An owner may qualify for 9 percent credits for new construction or substantial rehabilitation with a below market-rate HOME loan, below market-rate loan through the Hope VI program, below market-rate CDBG loan, etc.

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10 Year Rule for Fed-Assisted Projects

- ☐ Under previous law, an owner applied for a waiver from the 10-Year Rule to qualify for acquisition credits for a project assisted by either HUD or RD
- ☐ Under HERA, owners can qualify for acquisition credits for a project that is federally or state assisted even if it has been less than 10 years since the project was last placed in service

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QAP Requirements

- ☐ Beginning with their 2009 QAP, a state must take into account a project's energy efficiency and its historic nature in making the decision to allocate it low income housing tax credits

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Rehab Spending Threshold

- ☐ An owner must spend the greater of 20 percent of a building's adjusted basis or \$6,000 per low income unit to qualify for rehabilitation tax credits through the LIHTC program
- ☐ An owner should check their state's QAP to see if the \$6,000/unit spending threshold has been increased by a cost of living adjustment

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Relaxation of Related Party Rule

- ☐ For a building to qualify for acquisition tax credits, it may not be purchased by what the IRS considers to be a related party
- ☐ Prior to July 30, 2008, two partnerships were considered to be related parties if the same persons owned more than 10 percent of the capital interests or profits in both partnerships

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Relaxation of Related Party Rule cont'd

- ☐ Under HERA, two partnerships are counted as related parties if the same persons own more than 50 percent of the capital interests or profits in both partnerships
- ☐ This relaxation of the related party rule will make it easier for HUD-assisted properties, RD-assisted properties, and older LIHTC properties to change ownership and qualify for acquisition credits

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Section 8 Mod Rehab Projects

- ☐ Under previous law, a developer could not use the LIHTC program to refinance and recapitalize a property receiving assistance through the Section 8 moderate rehabilitation program
- ☐ A developer may now use low income housing tax credits to refinance and recapitalize a property receiving assistance through the Section 8 moderate rehabilitation program

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Meeting the 10% Test

- ☐ For the purposes of qualifying for a carryover allocation, an owner has until the date which is one year after the date of the credit allocation to meet the requirements of the 10 percent test
- ☐ It is critical that an owner know the official date on which their HFA awarded a building its credit allocation

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Bond Compliance – Student Rule

- ☐ Many bond regulatory agreements required owners with projects financed with tax exempt bonds to implement a different, more restrictive student rule
- ☐ Under HERA, owners of all projects financed with tax-exempt bonds, with or without LIHTC, following the LIHTC full-time student rule

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Bond Compliance – Available Unit Rule

- ☐ The available unit rule is applied by building in the LIHTC program and by project in the tax-exempt bond program
- ☐ Under HERA, a bond financed project
 - ☐ With LIHTC, applies the LIHTC AU rule
 - ☐ Without LIHTC, applies the bond AU rule

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Bond Compliance – Income Limits

- ☐ Under HERA, a project financed with tax-exempt bonds in an MTSP
- ☐ An owner follows the same rules for the tax-exempt bond program for determining a project's income limits as previously discussed for the LIHTC program

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More About HERA

- ☐ Additional provisions from HERA affecting the LIHTC program are discussed in the section of the webinar covering the changes to the 8823 Audit Guide issued in 2009 and 2011

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8823 Audit Guide 2009 and 2011 Versions



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2009 and 2011 Versions of the 8823 Audit Guide

- ☐ In January 2007, the IRS issued the initial version of the 8823 Audit Guide
- ☐ They issued an updated version of the guide in October 2009
- ☐ The IRS announced a new version of the guide on March 24, 2011 with a publication date of January 2011

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Categories of Noncompliance

- ☐ The guide is separated by chapters, each discussing a different category of noncompliance
- ☐ Although written for the HFAs, it provides guidance for everyone in the LIHTC industry on how to avoid being found out of compliance

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Changes Since 2007

- This review focuses on changes to the guide from its original version including:
 - Areas where the IRS has changed their policy; and
 - Areas not addressed in the original version of the guide

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Chapter One

Introduction

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Submitting Form 8823

- Regardless of whether the owner remedied the noncompliance or remains out of compliance, the HFA must file a Form 8823 with the IRS within 5 days of the end of the correction period

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Submitting Form 8823 cont'd

- ☐ A Form 8823 **must be** filed with the IRS to report the correction of previously reported noncompliance if it is corrected and back in compliance within 3 years after the end of the correction period

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Not a Legal Authority

- ☐ The guide is not a legal authority on its own, but serves as a single point of reference for all legal authorities that govern the LIHTC program
- ☐ Owners are expected to keep current on changes to the program in between updated versions of the guide

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Chapter Two

Instructions for Completing Form 8823

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The Initial Compliance Review

- ☐ The HFA may conduct its initial compliance review before issuing the Form 8609 for every building included in a project
- ☐ If the owner has not yet received Form 8609, the Forms 8823 should still be completed

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The Initial Compliance Review cont'd

- ☐ Do not send the Forms 8823 to the Philadelphia Service Center
- ☐ Send directly to the IRS Headquarter Analyst responsible for the LIHTC program
- ☐ Line 5, *Total Credit Allocated to BIN*, should be zero

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Chapter Three

Guidelines for Determining Noncompliance

Nothing new or noteworthy

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Chapter Four

Household Income Above the Income Limit Upon Initial Occupancy

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Use NNMGI Limits

- An owner uses the national nonmetropolitan median gross income limits if:
 - The project was PIS during 2006, 2007 or 2008, is located in the Gulf Opportunity Zone, and in a nonmetropolitan area as defined by ***IRC §42(d)(5)(B)(iv)(IV)***
 - The project is located in a rural area as defined in Section 520 of the Housing Act of 1949 and the NNMGI is greater than the AMI (not for bond-financed projects)

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IRC §42(d)(5)(B)(iv)(IV)

- **Nonmetropolitan area** means any county (or portion thereof) which is not within a metropolitan statistical area

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Reviewing 100% LIHTC Projects

- ☐ When an owner of a 100% LIHTC project is not required to complete annual recertifications, the state agency must review the initial income certification for a resident file chosen for inclusion in a compliance monitoring review

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Household and Family Size

- ☐ The IRS reminds owners not to include foster children or foster adults in the family size when selecting the income limit
- ☐ Do not include a guest in the family size when selecting the income limit
- ☐ A guest is someone temporarily staying in the unit with the consent of the resident

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Household and Family Size cont'd

- ☐ Include a child who will be living in a unit at least 50 percent of the time
- ☐ If there is a dispute over which parent may include the child in their income limit, verify which parent claimed the child as a dependent on their federal tax return

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Changes in Family Size

- ☐ An owner must certify the income for a new household member by doing 3rd party verifications as generally required by the LIHTC program
- ☐ How the owner adds the new member varies by type of project

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New Household Members cont'd

- ☐ Mixed-Income Projects: The new resident's income is added to the income for the existing household who remains on their original recertification schedule
- ☐ 100% LIHTC – The new resident's income is added to the income on the existing household's original TIC

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Example

- ☐ If a household originally qualified for an LIHTC unit in March 2005, recertified in 2006, 2007, and 2008, and added a new household member in Oct 2008, the owner would complete their next annual recertification in March 2009
- ☐ The income of the new member is included for applying the 140 percent rule

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No Longer Original Household

- ☐ A resident may add new members so long as one original member lives in the unit
- ☐ If all original members vacate the unit, the remaining occupants must be certified as a new income-qualified household unless:

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No Longer Original Household cont'd

- ☐ Mixed-Income Projects – The newly created household was income qualified or the remaining residents were income qualified when they occupied the unit
- ☐ 100% LIHTC – The remaining residents were independently qualified when they occupied the unit

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Example

- ☐ Michael occupied a 2-bedroom LIHTC unit in a mixed-income project in May 2006 and Jason joined his household in October 2007
- ☐ Michael moved out of the unit in January 2008
- ☐ Because Jason and Michael's combined income was less than the 2-person limit when Jason moved in, it was not necessary to certify him as an income-qualified resident when Michael moved out

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Household Size Changes cont'd

- ☐ There is no need to complete an initial income certification when a household size decreases
- ☐ When completing an annual recertification in a mixed-income project, the owner must use 140 percent of the income limit for the new family size to determine the need to implement the available unit rule

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Determining Annual Income

- ☐ Owners are expected to make reasonable judgments regarding the most reliable method for estimating the income a household receives during a year
- ☐ The IRS does not come down in favor of one option over an other; e.g., they do not favor counting the year-to-date number but they do not favor counting the average calculated from the past 6 pay stubs either

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Annual Income Calculations

- ☐ IRS is implementing the final income rule HUD implemented during 2010
- ☐ For a resident with irregular income making it difficult to project, the owner may use the actual income received during the 12 months before the effective date of their TIC to project their income for the coming 12 months

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Annual Income Calculations cont'd

- ☐ Do not include last year's earnings if the household demonstrates their earning ability has changed; e.g.,
 - ☐ Disability worsens
 - ☐ Industry layoffs
 - ☐ Workplace no longer in existence

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Income Calculations cont'd

- ☐ The IRS reminds owners to implement the changes from Change 3 to the 4350.3 HUD Handbook
 - ☐ Include income earned by a foster adult; and
 - ☐ Include unearned income of a foster adult and a foster child, but continue to exclude their foster care payments

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Income Calculations cont'd

- ☐ Deferred disability benefits from the Department of Veterans Affairs, received as a lump sum or in prospective monthly payments, are excluded from the calculation of annual income when determining eligibility for an LIHTC unit

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Change 3 to HUD Handbook cont'd

- ☐ Exclude that portion of a resident's federal, state, local or private pension paid directly to a former spouse per a divorce decree, separation agreement or annulment
- ☐ Include that portion of a resident's former spouse's pension paid directly to the resident per a legal agreement

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Deployment of Military Personnel

- ☐ Owners are encouraged to accommodate unique household circumstances when a member is called to active duty including:
 - Allowing a guardian to move into a unit on a temporary basis to provide care for dependents the military person leaves in the unit and exclude the guardian's annual income; and
 - Allowing a resident to provide care for a dependent of persons called to active duty and exclude the dependent's annual income; and

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Military Personnel cont'd

- Allowing leases to remain in effect for a reasonable period of time without a recertification depending on the length of deployment beyond that required by the Soldiers and Sailors Relief Act of 1940, even though the head of household is temporarily absent from the unit

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From HERA 2008

- ☐ Exclude the basic housing allowance a military family receives, but only in those counties, or adjacent counties, with military bases that experienced a significant increase in military personnel in recent years
- ☐ An owner should confer with their HFA if they believe their project is located in a covered county

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Income From A Business

- ☐ The IRS reminds us that a self-employed person must report their income on a Schedule C as part of their federal income tax return, regardless if they are reporting a profit or loss
- ☐ Some ineligible for a SS# can get an IT#
- ☐ The guide stops short of saying an owner should not rent to a self-employed person who is not filing their income tax returns

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Office Located in an LIHTC Unit

- ☐ A resident may use a portion of an LIHTC unit exclusively and on a regular basis as a principle place of business and claim the associated expenses as tax deductions, if the unit is their primary residence
- ☐ Daycare providers must have all required state licenses and insurance

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Educational Scholarships and Grants

- ❑ The IRS clarified their position on scholarships and grants:
 - Count scholarships and grants in excess of what is needed to pay tuition only for LIHTC residents who receive some form of Section 8
 - Exclude all scholarships and grants if an LIHTC resident isn't receiving Section 8

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Annual Income Calculations

- ❑ The new guide makes it clearer that the value of food stamps is excluded when calculating an applicant's or resident's annual income

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Resident Moves During Year 1 Example

- ❑ A resident moved into unit one on 5/31/04 and moved to another unit in another building in the same project on 10/29/04
- ❑ Their first unit is not rented again until 2/05 and 2004 was year 1 of the credit period
- ❑ For calculating the monthly A/F for year 1, their first unit is counted as low income for May, June, July, August and September

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Example cont'd

- ☐ The first unit is not counted as low income for Oct, Nov and Dec and is not included in the first year A/F calculated on 12/31/04
- ☐ The first unit counts as never-rented until occupied by a new family in Feb 05
- ☐ Second unit counts as low income for Oct, Nov, Dec and in the first year A/F on 12/31

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Transfers in 100% LIHTC Projects

- ☐ Residents of 100% LIHTC projects, where a household's current income is not known because the owner does not complete annual recertifications, may transfer between any buildings included in the same project
- ☐ Remember that a project is defined on Line 8b of a building's 8608 form

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Resyndicating Existing LIHTC Project

- ☐ Any household determined to be low income at move-in during the initial 15 year compliance period or the extended use period is a qualified low-income household for any new LIHTC allocation
- ☐ How the owner places the new credits in service varies by type of project

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Resyndication by Original Owner

- ☐ The owner is subject to the available unit rule for any resident found over 140% of their income limit at last recertification
- ☐ The vacant units continue to qualify as low income units under the vacant unit rule

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Resyndication by New Owner

- ☐ Must implement Rev Proc 2003-82 by testing the income of any resident last recertified more than 120 days before the start of the new credit period
- ☐ Vacant units do not count as low income
- ☐ Owner must calculate 1st year A/F monthly as generally required by the LIHTC program

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Rehab During Year 1 - Example

- ☐ Owner acquired a 10-unit bldg and finds that units 1-6 are occupied by ineligible residents
- ☐ The ineligible residents move out and the owner rehabs units 1-6
- ☐ Units 1-5 rented to eligible households in August and unit 6 is occupied by the eligible household in unit 7 who transfers in August

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Rehab During Year 1 – Example cont'd

- ☐ The owner rehabs unit 7 during Sept and the qualified resident transfers from unit 8 before the end of the month
- ☐ Unit 8 is now considered a vacant market unit

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Rehab During Year 1 – Example cont'd

- ☐ The owner temporarily relocates the residents in units 9 & 10 so they are out of compliance because they are out of service
- ☐ The owner rehabs units 8 – 10 in Oct and moves the 2 temporarily displaced residents back into units 9 and 10 but unit 8 remains vacant through December

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Rehab During Year 1 – Example

- ☐ The owner may include in the monthly A/F:
 - ☐ Units 1-6 for August through December;
 - ☐ Unit 7 for January – July and Sept – December;
 - ☐ Unit 8 for January – August; and
 - ☐ Units 9 and 10 for January – August and October, November and December

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No Noncompliance

- ☐ There is no noncompliance if the state agency determines that the owner used due diligence in accepting a household as qualified for the LIHTC program
- ☐ An owner can demonstrate due diligence by asking an applicant if they intend to seek employment and used all information received appropriately

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Chapter Five

Owner Failed to Correctly Complete or Document Tenant's Annual Income Recertification

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No Recerts at 100% LIHTC Projects

- ☐ Owners of 100% low income projects are no longer required to complete annual recertifications
- ☐ All buildings included in the project must have reached 100% low income status for an owner to be exempt from completing annual recertifications

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100% LIHTC cont'd

- ☐ Remember that a project is defined on Line 8b of each building's 8609 form
- ☐ Owners must continue to certify each resident's status under the full-time student rule annually
- ☐ An HFA may have additional requirements

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100% LIHTC cont'd

- ☐ Because owners are no longer required to apply for a recertification waiver, the IRS has rescinded Form 8877

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Recerts at Mixed-Income Projects

- ☐ An owner may complete a recert retroactive to the due date of a missed recert
- ☐ There is no noncompliance if there is no violation of the available unit rule
- ☐ The recert can count as the next annual recert if the owner completes it within 120 days of the next recert's due date

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Federal Grants

- ☐ For a building PIS after 7/30/08, eligible basis is reduced by a federal grant used to fund its development but not if a grant is used to fund its operation
- ☐ E.g., a grant may be used to fund the computers for the property's office and other common areas

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Chapter Six

Violation of the UPCS of the Local Inspection Standards

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Vacant LIHTC Units

- ☐ Vacant LIHTC units must be suitable for occupancy or violate the UPCS standards
- ☐ A state agency should allow a reasonable period of time to clean and repair the unit
- ☐ The IRS reminds owners not to claim credits for vacant units they do not prepare for occupancy

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Additional Reference

- ❑ The IRS added a reference to a written opinion they released on October 22, 2010
- ❑ In this written opinion, the IRS answered **two** questions regarding an owner's potential for being out of compliance with the physical inspection standards required by the LIHTC program

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Question One

- ❑ Must the suitable for occupancy requirement be determined unit-by-unit when the building's exterior condition is so poor as to lead to a determination that all its units are out of compliance?
- ❑ **Answer** – No. All units in a building may be found not suitable for occupancy based on the poor condition of a building's exterior components

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Question Two

- ❑ What is the relationship between HUD's UPCS and local health, safety and building codes?
- ❑ **Answer** – HFAs may use UPCS to guide their physical inspections but an owner may avoid an incidence of noncompliance by showing that the local code addressing the point in question reaches a result favorable to them

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Chapter Seven

Owner Failed to Provide Annual Certification or Provided Incomplete or Inaccurate Certifications

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Owner's Annual Certification

- ☐ The chapter still requires owners to certify they complete annual recertifications in the October 2009 version
- ☐ In the January 2011 version, the IRS added a note that for tax years ending after July 30, 2008, if all low income buildings in a project are 100% LIHTC, the owner is not required to complete annual income recertifications

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Chapter Eight

Changes in Eligible Basis

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Federal Grants

- ☐ For a building PIS before 7/30/08, a federal grant received during the compliance period to support its development or its operation causes a reduction in eligible basis
- ☐ It also causes a recapture of a portion of the credits the owner has already taken on the building

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Federal Grants cont'd

- ☐ For a building PIS after 7/30/08, a federal grant received to support its development causes a reduction in its eligible basis but a grant received to support its operation does not cause a reduction in basis
- ☐ A grant received to fund computers for a project's operation is not subtracted from eligible basis

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Not Federal Grants

- ☐ The guide includes a long list of funding sources not considered federal grants including: Section 8 payments, IRP through Section 236 program, PRAC rental assistance payments, public housing operating subsidy, HOPWA funding, and any other ongoing payment used to enable a property to rent to low income residents

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Loans from Federal Grants

- ☐ There is no reduction in eligible basis triggered by a loan to an owner of a qualified LIHTC project made from the proceeds of a federally funded grant

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Managers' Units

- ☐ If an owner is charging rent for a unit, the IRS may determine that the unit is not reasonably required by the project because the owner is not requiring the manager to occupy the unit to maintain their job
- ☐ Charging a manager or another employee rent will cause their unit to be deducted from eligible basis

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Community Service Facilities

- ☐ After HERA, an allowable community service facility cannot exceed (1) 25% of the eligible basis of the qualified low income project of which it is a part and does not exceed \$15,000,000, plus (2) 10% of the eligible basis of the project in excess of the amount calculated in (1)

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Chapter Nine

Changes in the Applicable Percentage

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Changes in Applicable Percentage

- ☐ Buildings not federally subsidized and PIS after 7/30/08 and before 12/31/13 have a credit percentage of no less than 9%
- ☐ Projects with a below market rate HOME loan PIS post-HERA does not need to meet the 40% @ 50% rule to get 9% credits

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Tax Exempt Bond Projects

- ☐ Tax-exempt bonds are still considered a federal subsidy
- ☐ An owner receives 4 percent credits unless they deduct the portion of the project financed by the bonds from eligible basis, or they pay off the bonds prior to placing the project in service

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Chapter Ten

Project Failed to Meet Minimum Set Aside Requirement

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Pre-HERA Projects

- ☐ For a building PIS before 7/30/08, a below market rate loan through either the HOME or NAHASDA programs is a federal subsidy
- ☐ The owner may receive 9% credits if they rent 40% of the units in every assisted building to residents with income not exceeding 50% of the AMI and these units count towards the LIHTC minimum set aside

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Chapter Eleven

Gross Rent(s) Exceed Tax Credit Limits

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Maximum Allowable Rents

- ☐ A unit is out of compliance if the rent charged, figured both monthly and annually exceeds 30% of the imputed income limit
- ☐ If an owner charges a fee a resident's first month for a washer/dryer hookup, it is noncompliance if the total charged the first month multiplied by 12 is more than the maximum allowable rent

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Maximum Rents cont'd

- ☐ Once out of compliance, a unit is **out of compliance for the remainder of the owner's tax year**
- ☐ An owner cannot avoid noncompliance by rebating the excess amount charged to the involved residences

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Chapter Twelve

Project Not Available to the General Public

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General Public Use Provision cont'd

- ❑ An owner does not violate this provision if their occupancy restrictions or preferences favor tenants:
 - with special needs; or
 - who are members of a specified group under a federal or state program; or
 - who are involved in artistic or literary activities

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Good Cause Provision

- ❑ An owner must not evict, non-renew the lease for, or otherwise terminate the tenancy of an existing resident of any LIHTC unit other than for good cause

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Public Use Provision cont'd

- ❑ LIHTC units are not open for use by the general public if the units are provided only for members of a social organization or provided by an employer for its employees
- ❑ The January 2011 version clarifies that a unit out of compliance with the general public use provision may be treated as a residential rental unit but not as a low income unit so won't produce an LIHTC

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Vacant LIHTC Units

- ☐ Not making reasonable attempts to lease vacant LIHTC units is a violation of the general public use provision
- ☐ What is a reasonable attempt varies depending on the size of the project and market conditions

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Student Households

- ☐ Units rented exclusively to student households are in violation of the public use provision
- ☐ These units may also be in violation of the full-time student rule depending each resident's household composition

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Student Households

- ☐ An owner is back into compliance with the general public use provision if:
 - ☐ They demonstrate marketing and rental practices are no longer in violation of the general public use provision; and
 - ☐ All the units are made available to the general public

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Chapter Thirteen

Notifications of Fair Housing Act Administrative or Legal Actions

Nothing New or Noteworthy

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Chapter Fourteen

Violations of the Available Unit Rule

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100 Percent LIHTC Projects

- ☐ Owners of 100 percent LIHTC projects are no longer required to complete annual recertifications
- ☐ Until further guidance is issued by administrative ruling or regulation, the IRS will evaluate an owner's compliance with the available unit rule as explained in the guide

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Available Unit Rule

- For purposes of the available unit rule only, all households documented as initially income-qualified are treated as income-qualified as long as the owner demonstrates due diligence when completing the initial TICs

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Over-Income Units

- If an over-income unit is vacated, it will be treated as an over-income unit and subject to the available unit rule until the effective date of the tenant income certification for the next resident

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A Comparable Unit

- A comparable unit is defined as having the same number of bedrooms and similar amenities unless the owner knows that the A/F for the year the unit becomes available will be determined by the building's square footage applicable fraction

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Noncompliance with Available Unit Rule

- ☐ Noncompliance occurs when an unqualified household occupies a unit, or reserve the unit if earlier
- ☐ A unit is reserved on the date a unit is no longer available to another resident according to local law; e.g., Paid security deposit, signed lease, signed a letter of intent to reserve the unit

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100 Percent LIHTC Projects

- ☐ The available unit rule is violated when an owner of a 100% LIHTC project fails to rent a unit to an income-qualified resident and cannot demonstrate due diligence when competing initial TICs
- ☐ The date of noncompliance is the effective date of the earliest unsatisfactory TIC found by the HFA

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100 Percent LIHTC Projects cont'd

- ☐ If an HFA finds a pattern of unsatisfactory TICs, they may require the owner to recertify all residents at the project to find who has income now exceeding 140 percent of their income limit

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Chapter Fifteen

Violations of the Vacant Unit Rule

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Vacant Unit Rule

- ☐ Definition of a comparable unit is the same as for the available unit rule
- ☐ Failing to market the low income units is also a violation of the general public use provision
- ☐ Noncompliance can lead to a failure to meet the minimum set aside

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Vacant Unit Rule cont'd

- ☐ Noncompliance with the vacant unit rule is corrected when a sufficient number of vacant units in the project are rented to qualified low income households

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Chapter Sixteen

Owner Failed to Execute and Record Extended Use Agreement

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One Year Grace Period

- ☐ The one year period for correcting the noncompliance for not recording the extended use agreement begins when the owner is notified it has not be properly executed and/or recorded
- ☐ The HFA should provide written notice and document the owner's receipt and attach it to the 8823 sent to the IRS

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Chapter Seventeen

Low Income Units Occupied by Nonqualified Full-Time Students

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Full Time Student Rule cont'd

- ☐ An owner is required to verify a household's status under the full-time student rule annually within 120 days of the effective date of their original TIC
- ☐ This rule applies to both 100% LIHTC and mixed-income projects

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Full Time Student Rule cont'd

- ☐ The guide provides a sample student certification form at Exhibit 17-1

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Foster Children and the Student Rule

- ☐ A person who was a foster child is not counted as a full time student
- ☐ The IRS has set no age or time limitation
- ☐ Some HFAs are setting age or time limitations for persons who were foster children to not be counted as full time students (e.g., up to age 24)

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Chapter Eighteen

Owner Did Not Properly Calculate Utility Allowance

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Utility Allowances

- ☐ The utility allowance does not include cable for television or Internet service
- ☐ Utilities provided through a sub-metering system are included if the rates charged the resident are what the utility company charges the owner, the owner charges a limited admin fee, and cost for sewerage is based on resident consumption

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Utility Allowances cont'd

- ☐ New regulation allows owners to obtain an estimate from a local utility provider or from the HFA, or to calculate it using the HUD utility schedule module, or to get an energy consumption model
- ☐ Owners should confer with their HFA on which options they allow owners to use in their jurisdiction

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Non Compliance

- ☐ The 2011 version of the guide clarifies that determinations of noncompliance are made when gross rent exceeds the maximum allowable rent as the result of owner computational or procedural errors in calculating the utility allowance
- ☐ **Using the wrong utility allowance, by error, may cause a loss of tax credits!!!**

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Non Compliance - No Utility Allowance

- ☐ Can only be corrected by performing an annual review to determine a utility allowance using current information
- ☐ An owner is in compliance if the rent charged plus the correct utility allowance is not more than the maximum allowable rent

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Non Compliance – No Annual Review

- ☐ Owner may conduct a review retroactive back to when the review of the UA should have been done or do a current review based on current information
- ☐ Owner is in compliance when they show the rent charged did not exceed the max allowable rent using the correct UA
- ☐ Could be no noncompliance if no overcharge

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Non Compliance – Insufficient Documentation

- ☐ Owner fails to maintain sufficient docs to justify the utility allowance
- ☐ Owner must be given the opportunity to provide the necessary documentation, including doing a new review, to justify the utility allowance in use and avoid noncompliance

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Reporting Noncompliance

- ☐ Noncompliance should be reported when the rent paid by the resident, plus the utility allowance, exceeds the max LIHTC rent
- ☐ Noncompliance should not be reported if use of the wrong UA does not cause the owner to overcharge the resident or if the error is corrected before the owner is notified of the HFA monitoring review

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Expanded Potential for Noncompliance

- ☐ Noncompliance with the utility allowance and maximum rent regulations typically affects multiple units
- ☐ May easily cause a project to fall out of compliance with its minimum set aside meaning an owner loses all LIHTC for the project for the year

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Chapter Nineteen

Owner Has Failed to Respond to Agency Requests for Monitoring Reviews

Nothing new or noteworthy

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Chapter Twenty

Low Income Units on a Transient Basis

Nothing new or noteworthy

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Chapter Twenty - One

Project is No Longer in Compliance nor Participating in the LIHTC Program

Nothing new or noteworthy

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Chapter Twenty - Two

Qualified Nonprofit Organization Failed to Materially Participate

Nothing new or noteworthy

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Chapter Twenty - Three

Other Noncompliance Issues

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100 Percent LIHTC Projects

- ☐ An HFA may require owners of 100 percent LIHTC projects to complete annual recertifications but an owner's failure to do so is not reportable to the IRS
- ☐ An agency may create their own system for penalizing owners who fail to meet all of their requirements

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Chapter Twenty - Four

Building Disposition

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Building Disposition

- ☐ A state agency must report the disposition of any building that is unlikely to continue to be operated as a low income building
- ☐ The state agency must report the disposition so the IRS can research an owner's compliance with any credit recapture requirements

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Recapture Requirements

- ☐ Exhibit 24-1 explains the credit recapture requirements applicable to different sale and disposition situations

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Recapture Bonds

- ☐ Per HERA, the IRS is not required to recapture the accelerated portion of the credit already taken on a building that is sold if there is reasonable expectation the new owner will operate the building within the LIHTC program for the compliance period
- ☐ No longer a requirement to post a bond to insure the building's continued compliance

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Chapter Twenty - Five

Miscellaneous Noncompliance Topics

Nothing new or
noteworthy

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Chapter Twenty - Six

Tenant Good Cause Eviction and Rent Increase Protection

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Evictions

- ☐ An owner who wishes to evict a resident must comply with applicable state/local laws governing evictions
- ☐ The owner must be able to demonstrate that good cause existed to support the eviction or termination of a resident from an LIHTC unit

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Failure to Renew an LIHTC Lease

- ☐ An owner is not obligated to renew a lease or enter into a new one and failure to do so does not, per se, constitute an eviction without good cause
- ☐ An owner must be able to demonstrate that nonrenewal of a lease is not a termination of tenancy without good cause and must give the resident all notices required by law

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Questions?

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